

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
LUCIANO FLOYD MAURO - and - *
JULIA CLARAMINA MAURO, * CASE NUMBER 04-41962
*
Debtors. *
*

*
LUCIANO FLOYD MAURO, *
et al., *
*
Plaintiffs, *
*
vs. * ADVERSARY NUMBER 04-4224
*
WORLDWIDE ASSET PURCHASING, *
*
Defendant. *
*

M E M O R A N D U M O P I N I O N

The matter before the Court is the Motion to Dismiss the Complaint to Determine Dischargeability of Debt (the "Motion to Dismiss" and the "Complaint," respectively). On November 3, 2004, counsel for Debtors/Plaintiffs Luciano Floyd Mauro and Julia Claramina Mauro (collectively, the "Plaintiffs") filed adversary proceeding 04-4224 to determine the dischargeability of the debt held by Defendant Worldwide Asset Purchasing ("Defendant"). For the reasons set forth below, this Court grants the Motion to Dismiss, without prejudice.

This Court has jurisdiction over this matter pursuant

to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I) and (J). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

FACTS

Plaintiffs filed a Chapter 13 bankruptcy petition and plan on April 26, 2004. The matter proceeded for six months as negotiations continued with various claims and creditors. This adversary proceeding was filed on November 3, 2004 to determine the dischargeability of the debt asserted by Defendant. The claim in question arose from a judgment granted in Youngstown Municipal Court on August 6, 2003.

Plaintiffs allege that this action is brought pursuant to 11 U.S.C. § 523(a)(5) and that the debt in question is "discharge-able in bankruptcy in that the Debtors' [sic] judgment lien on the debtors [sic] principle residence is wholly unsecured under 11 U.S.C. § 506." Complaint at ¶ 5.¹

ANALYSIS

After answering the Complaint on December 15, 2004, Defendant filed the Motion to Dismiss on March 30, 2005, which is based on: (1) incorrect jurisdictional citation and (2) failure to state a claim upon which relief can be granted (in

¹Although the Complaint states that the judgment lien in question is the "Debtors' judgment lien on the debtors principal residence," the Court assumes that this is a typographical error and that the sentence should read the "Defendant's judgment lien on the debtors' principal residence."

reliance on FED. R. CIV. P. 12(b)(6), made applicable pursuant to FED. R. BANKR. P. 7012(b)(6)).

The Complaint states that the action is brought pursuant to 11 U.S.C. § 523(a)(5). As Defendant correctly notes, this section of the Bankruptcy Code deals with the dischargeability of debts arising from family support payments, *i.e.* alimony or child support. Section 523(a)(5) is not applicable to Defendant's claim.

The Complaint fails to clearly assert a claim upon which relief can be granted. Without any supporting facts whatsoever, the Complaint merely alleges that the "debt is dischargeable in bankruptcy in that the Debtors' [sic] judgment lien on the debtors [sic] principal residence is wholly unsecured." Complaint at ¶ 5.² Under FED. R. BANKR. P. 7008 and FED. R. BANKR. P. 7009, a complaint functions as notice to the defendant, in order to prepare an adequate defense. To further this goal, a complaint need not set forth all specific facts in support of the claim, but must provide enough information so that the defendant is adequately notified about what claim is being brought. *F & J Roofing Co. v. McGinley & Sons, Inc.*, 518 N.E. 2d 1218 (Ohio Ct. App. 1987); *In re U.S. Shoe Corp. Litig.*, 718 F. Supp. 643 (S.D. Ohio 1989). Pleadings filed with the court must contain enough specificity to withstand dispositive motions.

²See Footnote 1.

The Complaint fails to state any facts to support the requested relief and hence, it cannot withstand the Motion to Dismiss.

Therefore, the Court grants Defendant's Motion to Dismiss, without prejudice, because Plaintiffs have failed: (i) to assert relevant statutory basis for their claim; and (ii) to state facts to support the requested relief.

An appropriate order will follow.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

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O R D E R

For the reasons set forth in this Court's Memorandum
Opinion entered this date, Defendant's Motion to Dismiss is
granted, without prejudice.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Memorandum Opinion and Order were placed in the United States
Mail this ____ day of August, 2005, addressed to:

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